

# The Solicitors' Journal

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## Current Topics.

### War Crimes.

SIR CECIL HURST, Chairman of the United Nations War Crimes Commission, made a statement to the Press on 30th August in which he outlined what had been done in the ten months of the Commission's existence, not only in collecting evidence of war crimes, but in taking the necessary steps to secure that the criminals shall not escape swift justice. He explained that the primary purpose of this fact-finding body was that of investigating evidence and drawing up lists of persons who, as the result of examination, were wanted as war criminals. The procedure, he stated, is that the competent department of each Government, known as the National Office, sends to the Commission cases of war crimes for which it considers punishment should be inflicted on the perpetrators, together with supporting evidence. Each case is then considered by a committee with the help of a representative of the National Office. Later this committee reports to the Commission, on whom rests the final responsibility for deciding what persons shall be put on the lists of persons wanted for trial as war criminals and whose surrender should be enforced upon the enemy. He explained that the difficulties of identification, great as they were, should be overcome with the occupation of enemy countries where local inquiries can be conducted and records become available. He added: "We are a fact-finding body and cannot complete the list until we are in a position to get the facts. The public must not be discontented if at the moment of 'cease fire' the list of criminals is not a very long one. The meagreness of that list will not be due either to idleness on the part of this Commission or to any want of goodwill on the part of the Governments concerned. It will be due to the extreme difficulties of the factual situation with which we are confronted." Asked about Hitler and Mussolini, Sir CECIL said: "The United Nations will decide what is to be done with them. It is not a matter for the Commission. The United Nations may decide to put them on trial, or they may decide to deal with them in the way Napoleon was dealt with after the Napoleonic wars, that is, by executive action. If they were put on trial it could not be before a court of any one particular country: it would have to be an international tribunal."

### Arrest and Trial.

THROUGHOUT the war, said Sir CECIL HURST in his statement to the Press, the United Nations have been dealing with an unprecedented set of circumstances, and in dealing with such circumstances you may, if you are to provide an appropriate remedy, have to make the law rather than follow old precedents. "If a number of war criminals take refuge in neutral countries, and if the United Nations find that existing extradition treaties are inappropriate in the circumstances, some new arrangement will be made forthwith. They would take whatever steps they thought proper for ensuring that these individuals were not allowed to enter neutral countries. But if they did get there very considerable pressure would be exercised upon those countries to persuade them to surrender the criminals should they be required for punishment. But a neutral State," said Sir CECIL, "is a neutral State, and there are limits beyond which even the whole body of the United Nations cannot go in dealing with a neutral." Some time ago, Sir CECIL stated, the functions of the Commission were enlarged to include that of making recommendations to the Governments on the methods to be adopted to ensure surrender or capture of those wanted for trial and the tribunals by which they should be tried. In connection with the former, Sir CECIL said, in a reference to neutral countries to which criminals might try to obtain access, that if existing extradition machinery were inappropriate to the circumstances some new arrangements might be insisted on to ensure surrender. The Governments were fully alive to that possibility. Methods to be adopted to ensure surrender or capture were dealt with in the first instance by a committee on enforcement. Sir CECIL said that it was the intention that war criminals should be brought swiftly to justice, in view of the danger that delay might bring

acts of mass vengeance in certain of the occupied countries. "Treatment of the criminals must be swift as well as just. It would not be in the interests of the United Nations as a whole that proceedings against war criminals should drag on for years in the countries of Europe." As regards trial, he said that a committee on legal questions made recommendations upon the kind of tribunals which should be employed. It would rest with each of the United Nations, not with the Commission, to decide what type of tribunal—whether the ordinary criminal court, or military tribunals, or some new form of *ad hoc* tribunal—will be employed. The Commission was at present examining the question whether some form of joint or inter-Allied tribunal might not have to be created to deal with cases which could not conveniently or effectively be tried before national courts. The statement is ample and well-timed. It is good news that the Commission is considering methods of capture and modes of trial as well as the collection of evidence. The best security against the repetition of the gruesome horrors which the Nazis have inflicted on mankind is that no alias, no plea that others gave the orders, and no legal quibble on extradition rights or jurisdiction, shall stand in the way of swift punishment being meted out to everyone who is criminally responsible for these outrages on humanity.

### Rent Levels.

RENT control seeks to check the operation of the laws of supply and demand in relation to dwelling accommodation, whenever its effect is to cause rents to rise out of the reach of tenants. In fixing a standard rent, therefore, a prime consideration should be the income level of the tenant for whom the accommodation is intended. Hitherto, the tendency in successive Rent Acts has been to "peg" rents according to the rent prevailing at a particular date. The absurdities resulting from the adoption of this device have been made sufficiently apparent in recent decisions of the Court of Appeal, such as *Davies v. Warwick* [1943] 1 K.B. 329. Clearly while the landlord's interest must be safeguarded, the public interest must be protected by preserving a fair relationship between the tenant's income and the rent he has to pay. For this reason the sample inquiry recently carried out by the British Institute of Public Opinion is more than welcome at a time when a departmental committee is busy considering the problems of rent control. The general finding of the inquiry is stated in the current issue of the *Oxford Bulletin of Statistics* to be that as income rises in the lower income ranges, about 2s. of each additional £1 of income is at first spent on rent, but in the higher income ranges, the addition falls to 1s. in the £1. In the lowest ranges (up to £2 net income per week), expenditure on rent averaged 8s. 8½d., or about 30 per cent. of income. It was in the lower income groups that the proportion of total income absorbed by rent was highest. The average rent where the income was £15 per week and more was as little as 29s. 5d. or about 9 per cent. of income. Further details were: Where the net income was £3 to £4 per week the average rent paid was 14s. or about one-fifth of income; where it was £4 to £5, 15s. 9½d. was paid on the average in rent; out of incomes from £5 to £6 the average paid in rent was 17s. 8½d.; in the £6 to £8 class the average rent paid was 20s. or about one-seventh of income. About one family in four owned or were in the process of buying their own houses. In the lowest income groups this applied to one family in seven, while in the class receiving incomes of upwards of £10 a week one family in every two owned or were buying their own dwelling-houses. Ever since the Housing Act, 1930, it has been established that housing authorities may take into consideration the circumstances of tenants and charge differential rents for similar houses according to those circumstances (*Leeds Corporation v. Jenkinson* [1935] 1 K.B. 168). In the Housing Acts, 1935 and 1936, this was done by means of rebates, but whatever method be adopted, the principle of paying the fullest regard to the tenant's circumstances, which constitute in fact the effective demand for dwelling accommodation, is absolutely sound, and the only limit of its application is the just claims of those who have invested their savings in land.

### Police Powers and Procedure.

A SMALL pamphlet recently issued by the Haldane Society is entitled "Detained for Questioning," and is written by "Solicitor" (author of "English Justice.") An introduction states that the subject of police powers and procedure was inquired into by a Royal Commission whose report was issued in 1929 (Cmd. 3297, 3s., H.M. Stationery Office). This commission was set up because of public disquiet following the case of Miss Savidge in 1928. The analysis by "Solicitor" deals with the fate of part of the 1929 report. This publication is designed to call the attention of the public to the urgent need for alteration of the law relating to the police and to suggest that the recommendations of this Royal Commission should now be carried into effect. A practice has grown up, the writer states, of using the prestige of the police and the uncertainty which exists in the mind of the ordinary citizen, and, indeed, among many of the legal profession, as to the extent of the powers of the police, to commit infringements upon the right of personal liberty. The most usual of these infringements are known as "Detention on suspicion" and "Detained for questioning." A reference to this practice will be found on p. 57, para. 154, of the report. Persons who are required for questioning are simply fetched by the police in exactly the same way as if they were being legally arrested. It is seldom suspected by the person whose liberty is infringed that there is anything illegal in what is done, and, indeed, the police often contend that this procedure is legal (see p. 56, para. 151, of the report). The report, in para. 45 of its summary of conclusions and recommendations, says: "'Detention' as a separate procedure is unnecessary and open to abuse, in that no definite limit is placed to the period during which persons may be 'detained.'" Notwithstanding this, says the writer, the practice continues and is probably on the increase. The procedure of the "delayed charge" subject to the safeguards recommended in para. 146, p. 54, of the report, gives the police all the powers that it is safe for them to have. The writer again quotes the report where it says: "A rigid instruction should be issued to the police that no questioning of a prisoner, or a 'person in custody,' about any crime or offence with which he is, or may be, charged, should be permitted. This does not exclude questions to remove elementary and obvious ambiguities in voluntary statement, under No. 7 of the Judges' Rules, but the prohibition should cover all persons who, although not in custody, have been charged and are out on bail while awaiting trial." This recommendation, he says, has not been put into force, and the practice of questioning persons under arrest or detained in the cells is probably on the increase.

### Further Points.

THE writer also indicates that the common practice of arresting a man on a minor charge, and, while he is in custody, questioning him with regard to a more serious crime of which he is suspected, is obviously an evasion of the Judges' Rules, and, according to the Commission's report, is to be deprecated. "Solicitor" states that with regard to the general body of accused persons, it would be more in accordance with the principle of the presumption of innocence, which is the basis of our system of criminal justice, that no statement made by a prisoner, after arrest or while under detention, should be admissible in evidence against him, and quotes from the report: "we have received a volume of responsible evidence which it is impossible to ignore, suggesting that a number of the voluntary statements now tendered in court are not 'voluntary' in the strict sense of the word." The writer further agrees with the recommendation of the Commission that the police should not be allowed to advise accused persons as to how they should plead. There are, however, he writes, too many benches not in agreement with the words of the Chief Metropolitan Magistrate, quoted on p. 104 of the report: "Every person is entitled to defend himself. It would be a monstrous thing if, because he exercised that right, you were to give him more punishment." He adds that the question of *agents provocateurs* has become of greater public importance since 1929, when the report was issued, and there is evidence of the increasing use of such methods, especially since the war. The report recommends (p. 116, No. 27) that the police should, as a general rule, observe only, without participating in, an offence and that where participation is essential, it should be resorted to only on the written authority of the chief constable, in cases where the offence is habitually committed in circumstances in which observation by a third party is *ex hypothesi* impossible. The writer submits that it is of vital importance that a record of the issue of such written authorities should be kept, and should be accessible to accused persons and those representing them. The report (p. 116, No. 32) recommends that the officer in charge of a case should not be present at an identification parade. The writer states that he has known an arrested man taken nearly half a mile out of his way so that he might pass the house of a prospective witness. The report made by the police upon the character and antecedents of a convicted person is also commented upon. A common statement, and one very difficult to rebut, is that the prisoner "is an associate of thieves" or "the leader of a gang." The report sets out on p. 50, para. 135, what is submitted to be the proper course: "We think the police should only depose to facts within their knowledge, and should refrain from expressing opinions which

may be incapable of proof or disproof." The writer notes that the report was unanimous, and without reservations of any kind. The Commissioners emphasised the effort they had made to report as soon as possible, because they believed that the issues raised in their terms of reference should not be left undetermined a moment longer than was necessary (see report, p. 125). The Committee, says "Solicitor," might have spared themselves trouble. In over fifteen years very little had been done to put their recommendations into practice. Both the Haldane Society and "Solicitor" deserve our gratitude for raising these urgent matters again.

### Juvenile Courts: Age of Justices.

THE LORD CHANCELLOR recently expressed the opinion that the age limit for justices on juvenile court panels should be seventy-five. It is reported that at the request of the Lord Chancellor some 400 justices of seventy-five years of age and over have retired from juvenile court work. On the general subject of the age for magistrates the *Sunday Express* records Sir GERALD DODSON, Recorder of London, as saying that there is no ideal age, but he qualified this by adding that the functions of a magistrate in a juvenile court are of a special nature. He added: "While a magistrate of mature years may be very efficient in a general way, it is highly desirable that in the administration of justice relating to juveniles it should not appear that the Bench, by reason of age, is out of touch with the needs and requirements of a younger generation." There have been varying views as to the correct age at which magistrates should retire from work in the juvenile courts. About a year ago the Magistrates' Association circulated a statement that no justice should sit in a juvenile court after he had attained the age of seventy, and none should be elected for the first time to a panel after the age of sixty. The late Lord Atkin, in a letter to *The Times* of 31st August, 1943, seemed to hold the view that septuagenarians were not by the fact of mere age removed from sympathy with the difficulties of the young, and he strongly deprecated the decision of the Leicester City Justices that no magistrates should be appointed to the juvenile court after they had attained the age of fifty-five, and that sixty-five should be the retiring age. A later contribution to the discussion from a number of juvenile court magistrates emphasised that successive Secretaries of State as well as the late Lord Chief Justice have recommended that the work of juvenile courts should be entrusted to younger members of the bench, and asked how many septuagenarian magistrates regularly visited hostels, probation homes, and girls' and boys' clubs. A Home Office circular sent to clerks of justices last year also emphasised the need of appointing younger justices to the juvenile court panels. Now that some of the oldest of our magistrates have left the juvenile courts, the way is clear for the appointment of younger magistrates to the panels.

### Unit Trust Control.

IT was recently announced that a Unit Trust Control Council has been formed by the Municipal and General Securities Company, Allied Investors' Trusts, and the Orthodox Unit Trusts to enforce the spirit and letter of the regulations made by the Board of Trade under the Prevention of Fraud (Investments) Act, 1939, and also an agreed supplementary code of conduct. For example, the council goes beyond the Government's requirements by removing an obvious hardship to the public involved in the managers' legal power to charge the full preliminary charge regardless of the lapse of part of the life of the trust. Under the council's code of conduct this charge must be gradually reduced as the trust ages. Provision is made against impairment of capital by inflation of distributions through buying securities cum-dividend. Wide powers of investigation are given to the comptroller to prevent concealed charges and profits at the expense of the trust or of unit holders, to an extent which is not feasible by way of legislation. The code of conduct is to be enforced in the public interest by an independent comptroller, and a referee. Expulsion from membership is to be ordered by the independent comptroller, with right of appeal by the member concerned to an equally independent referee. The comptroller will decide the case in the first instance after consultation with the solicitor to the council. If the member does not appeal, or if the comptroller's decision is confirmed by the referee, the removal will be notified to the council by the comptroller and will take effect unless 90 per cent. of the other members are against the removal. The requirements for qualification for membership are confined to an undertaking to conform to the policies laid down by the council for the protection of the investing public. Unit holders who believe they have *bona fide* grounds for complaint will have their claims promptly and fully investigated and impartially adjudicated. Provision is made for immediate restitution by managers in any case in which the complaint is upheld by the comptroller. The Anderson Committee of 1936 recognised that there were aspects of the unit trust movement which could not be covered by legislation but only by the independent action of the trusts. That the leaders of the movement have followed this advice is a welcome sign of the times.

## Schedule A Income Tax Valuation.

ONE of the most perplexing features of our income tax system from the standpoint of the layman is that the valuation of property for Sched. A income tax purposes is different from the valuation for local rates. In peace-time the Inland Revenue have their own independent valuation of property at five-yearly intervals. The last Sched. A quinquennial revaluation was in 1936-37. Another revaluation was due in 1941-42, but this was postponed owing to the war. During the war there have been important changes introduced into the system of assessing properties for Sched. A which make it doubtful whether the old system of quinquennial revaluation for Sched. A will ever be revived.

The Income Tax Acts provide that the valuation of property for Sched. A should be on a rack-rental basis. If property is in fact let at a rack rent then this is the figure taken: otherwise the value has to be estimated as nearly as possible. Until 1940 the Inland Revenue had no power to increase a Sched. A assessment during a quinquennium and they had to await a revaluation year. The taxpayer, however, had the right of appeal against a Sched. A assessment in any year if he contended that the assessment was excessive. The only circumstances in which the Inland Revenue could increase a Sched. A assessment in a non-revaluation year were in the event of structural alterations or splitting up of the property which altered its identity.

Then, in the Finance Act, 1940, there was a far-reaching change introduced into the system of Sched. A valuation. In that year the Inland Revenue acquired powers to assess rented properties year by year by reference to the actual rent paid for the year. In effect, the quinquennial revaluation system was discarded so far as rented properties are concerned. If the Sched. A assessment of a rented property is inadequate, then the Inland Revenue can raise an assessment on the "excess rent" under Sched. D.

The effect of this change is to make the quinquennial revaluation virtually inoperative so far as the assessment of rented properties is concerned. In regard to owner-occupied properties, however, the old system still applies: that is to say, the owner can claim adjustment of the Sched. A assessment in any year, but the Inland Revenue can only increase the assessment in a revaluation year.

There are no statistics available showing the proportion of Sched. A assessments on owner-occupied properties which are based on the rating valuation, but the proportion is probably quite large. It is, of course, quite definite that the rating value is not binding and conclusive for Sched. A. The reason why the rating valuation is unsatisfactory for Sched. A purposes is that it is usually well below the rack-rental basis. In the case of *Walker & Son v. Brisley* [1900] 2 Q.B. 735, Grantham, J., said: "I take it that they (the Commissioners) can look at that (the rating valuation) if they like, but they are not bound by it."

In July, 1936, a question was asked in the House of Commons in the following terms: "Does my right hon. friend think inspectors of taxes are more qualified to assess the value of houses than the local rating committee which knows all the local conditions?" The Chancellor of the Exchequer replied: "The local rating assessment is only one of the factors that the inspectors have to take into account."

In reply to another question in May, 1937, in which it was stated that the public were becoming puzzled and annoyed at receiving two different assessments for the same property, Mr. Chamberlain said: "It would take too long to discuss here the difference between assessments for Sched. A and assessments for rating purposes, but my hon. friend is aware that different considerations arise in the two cases."

In answer to a further question, the Chancellor replied: "The annual value of properties for the purposes of assessment to income tax, Sched. A, is determined by the General Commissioners of Income Tax, and the value for rating purposes is only one of the factors which are taken into consideration in determining these assessments."

Nevertheless, in practice, the Inland Revenue do frequently adopt the rating valuation as the basis of Sched. A assessments. The present position whereby some owner-occupied properties are assessed on the rating figure and others on the hypothetical rack-rental value (which will normally be considerably higher) is inequitable and anomalous.

One gets the type of case in which a property was previously let and the Sched. A assessment was, say, £90, based on the rent. Then it becomes owner-occupied, and the owner claims a reduction in the Sched. A assessment to the rating figure, say £56. The Commissioners may argue that there is no evidence that the rack rental value is less than £90, and the taxpayer is unable to adduce any valid counter-argument. He will probably admit that £90 is not excessive on a rack-rental basis, and will have to base his case solely on the argument that other owner-occupied houses in the vicinity are assessed on the rating valuation. Sometimes the Commissioners will accept this argument, but in certain areas they raise difficulty.

Then there is the anomaly of two neighbouring identical houses, possibly semi-detached, one let and the other owner-occupied; the first, in consequence of having a considerably higher Sched. A

assessment than the other. This type of case has been the cause of much inequity in connection with the assessment of the war damage contribution on property. For purposes of war damage contribution it is the Sched. A assessment as at 3rd September, 1939, that has to be taken. Because of the difference in Sched. A valuation of owner-occupied and rented properties respectively one has frequently had the anomalous position arising of two adjoining identical properties being assessed on figures of, say, £80 and £55 respectively for war damage contribution. If at some stage during the war the rented property became owner-occupied, the owner may have been able to get his Sched. A assessment reduced to the rating figure of £55, but he has had to continue to pay war damage contribution on £80. It is obvious that an anomalous system of valuation of this kind is in need of overhaul and reform.

The best solution would undoubtedly be to have a uniform system of rack-rental valuation both for rating and Sched. A valuation. Now that the Inland Revenue assess rented properties on a year to year basis, it is indefensible to maintain a separate quinquennial valuation system for assessment of owner-occupied properties if the assessment for rating purposes could be placed on something approximating to a rack-rental basis.

It will be appreciated, therefore, that the Inland Revenue are directly interested in the present agitation for reform of rating valuation. An inquiry into rating valuation has recently been conducted for the National Institute of Economic Research by Professor J. R. Hicks, Mrs. V. K. Hicks and Mr. C. E. V. Leser. The Hicks report reaches this conclusion: "The rating system is at present in a very sorry mess . . . With the confusion left by one war superimposed upon the confusion left by another, the rating system will get into such a tangle that there is a grave danger of its having to be swept away altogether." The root cause of the trouble, says the report, is the tendency for the basis of rating assessment to lay well behind actual rents. This tendency has become greatly accentuated between 1914 and 1939. It might appear that the basis of rating valuation is not of any material importance, as if valuations are low poundages have to be higher to raise a given sum of money. The Hicks report shows, however, that under-valuation does in fact cause serious anomalies and injustices. One objection is that it is impossible to take the rateable value of an area as being in any sense an index of its total wealth, and this has stood in the way of really effective assistance to the poorer areas by means of grants. The Hicks report recommends the transference of responsibility for valuation to a central authority, and a series of reassessments to bring valuations up to a legal basis.

The Hicks inquiry did not extend to the question of Sched. A valuation for income tax, but, as we have shown, the Inland Revenue have a very real and direct concern with the question of rating valuation reform. The desideratum from the Inland Revenue standpoint is to secure a system of valuation on the rack-rental basis, and a system which would, moreover, ensure that this basis was effectively maintained. (One possibility would be to achieve a fusion of the local rating valuation machinery with the Valuation Office of the Inland Revenue.) It is clear that the Chancellor of the Exchequer should be in contact with the Ministry of Health on the question of rating valuation reform in order to ensure that the problem of Sched. A valuation is solved at the same time.

## A Conveyancer's Diary.

### Commorientes again.

IN our issue of 26th August there is a note of the decision of Morton, J., in *Re Mercer*, which introduces a fresh point in connection with "commorientes" as well as being a further example of the original point. M and his wife lived together in a flat. The furniture belonged to M. He was older than his wife. On a certain night the flat was destroyed by enemy action and both M and his wife were killed in it. There was not satisfactory evidence showing exactly how they met their deaths; it was possible that they had both been killed by one bomb, though their bodies only bore signs of injury by fire. At some stage of the night the flat caught fire and the furniture was totally destroyed by fire. M, having died intestate, the court was first asked to say whether his estate was to be distributed on the footing that he had predeceased his wife. On this point the learned judge said that *Re Grosvenor* [1944] Ch. 138, established that it is possible in law for two persons to die simultaneously, but added that the cases in which the court could find as a fact that such an event had occurred must be very rare. In the present case there were other possibilities. It followed that the actual order of the deaths was unknown and s. 184 of the Law of Property Act therefore applied. The husband, being the elder, must thus be treated as having died first. On this point, then, we have the development that, in spite of the decision in *Re Grosvenor*, the deaths were held not to have been simultaneous although the parties were in the same flat. We have not yet a full report, of course, but it looks as if the facts in *Re Mercer* were only slightly distinguishable from those in *Re Lindop* [1942] Ch. 377, which was decided similarly at a date before *Re*

*Grosvenor*. *Re Mercer* seems likely to be of interest as showing that s. 184 applies unless there is evidence to displace it.

The second point was as to the destination of the moneys to be received from the Government by way of compensation for war damage to the furniture. If the furniture itself had still existed at M's death, it would have gone to his wife as "personal chattels" upon M's intestacy. It would follow that in such event the estate of the widow, as the equitable owner of the chattels, would take the war damage payment. But the onus is always upon a person who makes a specific claim under a will or on an intestacy to show that his claim is good as against the residuary legatee or the persons entitled to residue on intestacy. Though the widow took any personal chattels that the deceased had at his death, the onus was on her to show that he had any. Such onus could not be discharged, because there was nothing to show that the furniture had not been destroyed before M's death. The foregoing outline of *Re Mercer* is necessarily incomplete, and it may be necessary to discuss it again when the full report is available.

*Re Howard* [1944] P. 39, is yet another case of the same sort. The testator made a will in 1933. On 6th May, 1940, he made two wills, one leaving his whole estate to his wife and the other leaving his whole estate to his son. Each of these wills contained the usual clause revoking all former wills, and there was nothing to show in what order they were executed. In September, 1940, the testator, his wife and his son were all killed during an air-raid by the explosion of a bomb which demolished the house in which they were. Only scattered remnants of the parents' bodies were found: that of the son was found apart and not dismembered. It is stated in the report that the parents were sleeping in one room and the son in another room on another floor. In his judgment Henn Collins, J., held that the testator had died intestate. The testator had evidently meant one of the wills of May, 1940, to operate, but one could not say which. Though neither could be admitted to probate, their revocation clauses were effective to revoke the will of 1933. With very great respect, I do not see what else it was necessary for the Probate Division to consider. But the second half of the judgment of the learned judge is concerned with the question "whether there is any evidence of survivorship, or, failing evidence, whether the presumptions which are provided by s. 184 of the Law of Property Act arise." On this point he held that "*Re Grosvenor* constrains me to find that the deaths of the parents were in law simultaneous," but that there was uncertainty whether the son died before or after the parents. That being so, s. 184 applied as between the parents taken together and the son.

The only difference between *Re Howard*, so far as it concerned the parents, and *Re Lindop*, was that the bodies were dismembered in *Re Howard*, but not, it seems, in *Re Lindop*. In both cases the court seems to have gone on the footing that the parties were sleeping in the same room. *Re Mercer* differed from *Re Lindop* only in the minor circumstance that the report at present available does not expressly suggest that the parties were in bed in the same room at the time of the explosion. All three cases differ from *Re Grosvenor* because the parties were in the ordinary rooms in houses, while the Grosvenors were in a small air-raid shelter, so that there was no doubt that they were both equally close to the explosion. *Re Howard*, though doubtless right as regards the son, is really inconsistent with *Re Lindop* and *Re Mercer*, and I should expect it not to be followed in preference to *Re Mercer*. As the deceased was intestate whatever the order of deaths, the judgment is *obiter* on the question of survivorship.

## Landlord and Tenant Notebook.

### Recoverable Rent, Rateable Value, and Compensation Rent.

THE first of the expressions in the title is to be found in the interpretation section (s. 16) of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, which defines it as "... in relation to any dwelling-house, the maximum rent which, under the provisions of the principal Acts, is or was recoverable from the tenant." The second occurs in the Valuation (Metropolis) Act, 1869, s. 4, and in the Rating and Valuation Act, 1925, s. 22, by virtue of which it involves ascertaining "the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament ..." or "the rent at which the hereditament might reasonably be expected to let from year to year ...". The expression "compensation rent," not actually used in the Compensation (Defence) Act, 1939, means, for the purposes of this article, the amount or part of the amount payable under that Act in respect of the taking possession of any land, which amount, by s. 2 (1), always includes "a sum equal to the rent which might reasonably be expected to be payable by a tenant in occupation of the land, during the period for which possession of the land is retained ... under a lease granted immediately before the beginning of that period ...".

Observations made in "Current Topics" in our issues of 18th April and 8th July last (88 Sol. J. 130 and 234) show that some bewilderment has been caused by decisions about the effect of the "maximum rent" provisions of the Increase of Rent, etc.,

Restrictions Acts on those providing for the assessment of rateable value and of "compensation rent" respectively. For it was laid down by *Poplar Assessment Committee v. Roberts* [1922] 2 A.C. 93, that the Increase of Rent, etc., Act, 1920, was not to be taken into account in determining rateable value under the Valuation (Metropolis) Act, 1869; but in *Gibson v. Minister of Health*, reported in the *Estates Gazette* of 11th and 18th March last, the General Claims Tribunal held that while the Rent, etc., Restrictions Acts had no direct application to the determination of compensation rent, the indirect effect of that legislation on the market could not be excluded from consideration. The meaning of this is, as "Current Topics" remarked on the second occasion, a little obscure, but the effect of the decision was, it was submitted, not in the least doubtful. The point which I propose to discuss to-day is whether there is any real conflict between the two decisions.

The respondent in *Poplar Assessment Committee v. Roberts* was tenant of a beerhouse in the borough named. The rent was £10 a year, but it appeared that he was assignee and had paid a premium. Also, it was a "tied" house, so it is not surprising that the rateable value was £48 on 3rd August, 1914, and when he took over, and this, by virtue of the proviso to s. 12 (1) (a) of the Increase of Rent, etc., Act, 1920, was the standard rent. On the occasion of the 1920 quinquennial valuation the appellants proposed to increase the rateable value to £94, and the question which became the subject of proceedings could, as Lord Buckmaster said, be readily stated: it was simply whether the Act of 1920 affected the rateable value of the hereditaments to which it applied. But, as the learned Lord Chancellor also said, it was not so easy to answer. Three judges of the Divisional Court and two out of three judges of the Court of Appeal had decided it in favour of the respondent; and in the result, four out of five lords of appeal agreed with the minority judgment just alluded to.

I think the most cogent argument advanced by the appellants was that based on the nature and purpose of rating. Coke would probably have pointed out that "rate" was derived from "ratio," the principle underlying the system being that which is sometimes expressed "from each according to his means." Emphasis was laid on the "taking one year with another," and it was urged that if the decision of the courts below were upheld two precisely similar hereditaments might be differently rated when one was let and the other owner-occupied. In acceding to these arguments, the majority of the House referred to past decisions showing that the value of the property to a particular landlord was not the criterion. Lord Buckmaster stated the position succinctly in these terms: "The rent that the tenant might reasonably be expected to pay is the rent which, apart from all conditions affecting or limiting its receipt in the hands of the landlord, would be regarded as a reasonable rent for the tenant who occupied under the conditions which the statute of 1869 imposes." Lord Atkinson pointed out that the Increase of Rent, etc., Act, 1920, was designed to prevent exploitation of the demand for dwellings, not to cure excessive or defective rating. Rating, said Lord Sumner, was a process between an occupier and a rating authority, to the determination of which the landlord and the lessee were strangers. Referring to a number of cases showing that statutory restrictions on profit-earning or rent-earning capacity must be taken into consideration, on which the courts below had relied, Lord Parmoor said that the restriction imposed by the Increase of Rent, etc., Restrictions Act did not fall within that category: the value of the beerhouse to its occupier was not affected by the statutory restriction on rent.

In the light of the above, it certainly seems that the case of compensation rent under the Compensation (Defence) Act, 1939, is a very different matter, and it is not surprising that the court which decided *Gibson v. Minister of Health* considered the position on *alio intuitu* lines. The facts here were that the claimant had taken a London house in 1913 at an annual rent of £18 10s. Later, he bought the freehold and laid out a considerable sum on improvements. When the present war broke out the rateable value of the property was £22 10s., and this, by virtue of the same proviso as that operating in *Poplar Assessment Committee v. Roberts*, became the standard rent under the Rent, etc., Restrictions Act, 1939. He left the house soon before 6th May, 1941, on which date it was requisitioned. Apparently the respondents were willing to agree £22 10s. as the proper compensation rent, but the tribunal awarded the claimant (who wanted £52 a year) £22 compensation rent.

I think the explanation of the slight obscurity to which reference has been made must be sought in consideration of both law and facts. The Compensation (Defence) Act, 1939, may, like the rating statutes, invite contemplation of a hypothesis; but it is that of rent payable by a tenant in occupation under a lease granted immediately before the period, not that of rent payable taking one year with another, or under a yearly tenancy. Now several decisions on quite different points have reflected the fluctuations in the letting value of properties caused by fluctuations in *Lufthaffe* activity (the "Notebook" has from time to time commented on the fact that adjacent houses of the same size and character may have very different standard rents if one was first let when air raids were at their worst, the other when their cessation or suspension had led to a strong demand). In

*Gibson v. Minister of Health* the facts show that the requisitioning occurred during a very bad period, and the house had in fact been vacated. In these circumstances an award of less than the standard rent is understandable: but the case did not actually decide whether an award exceeding the standard rent could be made. In my view, it would be difficult to apply *Poplar Assessment Committee v. Roberts*, because, though a dwelling-house may be let furnished and thus be outside the Increase of Rent, etc., Restrictions Acts, this is not the lease which the Compensation (Defence) Act, 1939, directs us to imagine. But if the premises could be let for business purposes only, compensation rent might exceed rateable value. This is, I suggest, what is meant by the statement that though there was no direct application, indirect effect on the market could not be excluded.

## To-day and Yesterday.

### LEGAL CALENDAR.

**September 4.**—In August, 1732, Ely Hatton was tried at Gloucester for the murder of Thomas Turberville of Mitchel Dean, a carpenter, who had been found dead in his workshop with his skull chopped to pieces. The evidence was purely circumstantial. Witnesses swore that the shirt and stockings Hatton was wearing when arrested belonged to the deceased and that there was blood on his coat. At the inquest he said the shirt was his father's, but in custody he said it was his brother's. His story was that he had gone out that evening with Turberville to see some deer and had not returned with him. He was convicted and on the 4th September, he was hanged, protesting his innocence as he hoped for salvation. His body was afterwards hung in chains.

**September 5.**—Simon Fraser, Lord Lovat, that strange blend of wild Highland chief and cultivated gentleman, was executed for his part in Prince Charlie's rising, but once before, nearly fifty years earlier, when he was Captain Simon Fraser, he had been condemned to death on another charge. The story of it was this. When Hugh, 9th Lord Lovat, died in 1696, his eldest daughter Amelia assumed the title of Baroness Lovat, though her right was called in question by her uncle Thomas Fraser, who assumed the title as 10th Lord Lovat. Simon, his son, decided that the best way to settle the business was to marry her, but the steps he took were so far unsuccessful that her relatives entered into a treaty for her marriage to the Master of Saltoun. Simon thereupon raised his followers in arms in Highland fashion to the number of some hundreds, committed various outrages and captured Castle Downie, the chief seat of the family. Finding the daughter removed beyond his reach, he took his revenge by forcibly going through a ceremony of marriage with her mother, the Dowager Lady Lovat, in the middle of the night, sentries guarding her bedroom door and bagpipes drowning her cries. In the result, he and his father and several of his followers were tried in their absence on a charge of treason, for they did not venture to obey the summons to Edinburgh. The hearing began in the Court of Justiciary on the 5th September, 1698.

**September 6.**—On the following day, the 6th September, the jury brought in a verdict of guilty. The Frasers were condemned to death as traitors, and it was ordered that "their name, fame, memory and honours be extinct and their arms to be riven forth and delete out of the book of arms." Simon removed his father to Skye, where he died in the following year. He himself took to the northern Highlands with a band of faithful followers, where he eluded all pursuit until 1700, when he received the King's pardon. This, however, was limited to offences against the State, and accordingly when he failed to appear before the Court of Justiciary a few months later to answer for his outrage on the Dowager Lady Lovat he was outlawed. After many years of plot and counter-plot and intrigues in France he succeeded in rehabilitating himself by his services against the rebels during the Jacobite rising of 1715, receiving a full pardon.

**September 7.**—On the 7th September, 1782, "was executed at Hereford gallows, one John Webb for having plundered a Venetian vessel driven on shore on the coast of Glamorganshire by distress some time in November last. This, it is hoped, will put a final stop to that inhuman practice of plundering ships wrecked upon the coast."

**September 8.**—After Jonathan Simpson had served his apprenticeship with a Bristol linendraper, his wealthy father gave him £1,500 to set him up in business there. A marriage with a merchant's daughter brought him another £2,000, but the girl's father had forced her to give up a poorer suitor whom she truly loved and with him she kept up a liaison. This so embittered her husband that he wasted all his money and took to highway robbery. Once he reached the gallows, but a reprieve procured by his relatives arrived just in time. He met with great success in his calling, and one hard winter, being an excellent skater, he robbed great numbers of people between Fulham and Kingston Bridge when the Thames was frozen over. He was finally caught after a desperate fight with two captains of the Foot Guards whom he held up near Acton. His horse was shot under him and he was wounded in both arms and one leg before he was secured. He was hanged at Tyburn on the 8th September, 1686, at the age of thirty-two.

**September 9.**—On the 9th September, 1685, the terrible assizes at Dorchester, at which were arraigned the rebels involved in the Duke of Monmouth's rising, were drawing to a close. On that day "there were 8 more convicted, 8 brought in their certificates upon the King's Proclamation which were allowed and 9 others disallowed." (This was a proclamation made by King James a fortnight after the Duke's landing in England, promising pardon to those rebels who came in and submitted within four days.)

**September 10.**—On the following day, the 10th September, there were twenty more prisoners for trial and the rest of those convicted at the assizes came up for sentence. Two hundred and fifty-one were condemned to death, but only about sixty were actually executed, being sent to different parts of Dorset for the purpose, to Lyme, to Bridport, to Weymouth, to Melcombe Regis, to Sherborne, to Poole and to Wareham. In no case was the sentence for treason carried out in all its vigour, for all were hanged till they were dead before their bodies were quartered.

### BATHING LAW.

The recent case at Littlehampton when Barnard, J., was fined 5s. for bathing in the sea contrary to Defence Regulations attracted considerable attention in the Press, and doubtless, so far as journalists are concerned, sea bathing will ever henceforth remain one of his leading characteristics. He will probably be linked with Vice-Chancellor Shadwell, who was president of the Society of Psychrolutes, of which the qualification for membership was to bathe daily out of doors from November to March. This he faithfully observed, whatever the weather, in one of the creeks of the Thames near his house at Barn Elms. It is said that once while so engaged he was called upon to grant an injunction during the Long Vacation. Much judicial learning on the matter of sea bathing is to be found in the report of *Blundell v. Catterall* (1821), 5 B. & A. 268. Best, J., said: "Men have, from the earliest times, bathed in the sea; and, unless in places or at seasons when they could not, consistently with decency, be permitted to be naked, no one ever attempted to prevent them . . . Bathing promotes health. By bathing, those who live near the sea are taught their first duty, namely, to assist mariners in distress. They acquire, by bathing, confidence amidst the waves, and learn how to seize the proper moment for giving their assistance . . . Bathing machines were used before my time, and I believe before that of the oldest person now alive, and I think the use of them is essential to the practice of bathing. Decency must prevent all females, and infirmity many men, from bathing, except from a machine."

## The Lucky Dip.

The Medes and the Persians, if ancients' assertions  
Were true, had immutable laws,  
And judge and assessors were hard on transgressors  
Who pleaded without showing cause.  
How different the case is in watering places  
Where magistrates sit in review  
Of citizens' breeches on sections of beaches  
Reserved for the uniformed few.  
With 'Regional Coms' as protection from bombs,  
And mines—when they're lying about,  
A male in undress may appear in a mess,  
But all others are warned to "Keep out!"  
And His Majesty's judges, whom no one begrudges  
Their claim to be clean and sublime,  
Should (in humble submission) know self-exposition  
May well be accounted a crime.  
Less learned humans, whose native acumen's  
The envy of those who are barred,  
In bearskin and 'nightie' invoke the Almighty  
To witness they're in the Home Guard.  
But stage or screen idol who enters the tide'll  
Soon find himself high on the rocks,  
Roped in with his brothers (Re Barnard & others,  
And Rex versus Nervo & Knox).  
Yet mercy and justice, in those whose the trust 'tis  
To safeguard Defence of the Realm,  
Walk ever, the each with the other, to teach  
Fairmindedness rules at the helm.  
Says the senior 'beak' with his tongue in his cheek,—  
"Being moved by most eloquent pleadings,  
"We decree every nob pay a fine of five bob  
"And His Lordship the costs of proceedings."

Littlehampton,  
21st August, 1944.

E. H. C.

## Books Received.

**Legal Effects of War.** By Sir ARNOLD DUNCAN MCNAIR, C.B.E., LL.D., F.B.A., Vice-Chancellor of the University of Liverpool, *Bencher of Gray's Inn*. Second Edition. 1944. pp. xx and (including Index) 416. Cambridge: University Press. 25s. net.

**The Stock Exchange Official Year-Book, 1944.** Compiled and Edited by the Secretary of the Share and Loan Dept. of the

Stock Exchange, London, E.C.2. pp. cxxxii (including Index) and 3136. London: Thomas Skinner & Co. (Publishers), Ltd. 44 net. [This edition, owing to paper restrictions, is out of print.]

**The Problem of Statelessness.** By P. WEIS, Dr. Jur., and R. GRAUPNER, LL.B. July, 1944. pp. 40. London: British Section of World Jewish Congress. 2s. net.

**The War Damage Acts.** Second Edition. By G. GRANVILLE SLACK, B.A., LL.M. (Lond.), of Gray's Inn, Barrister-at-law, and Special Contributors. 1944. pp. xxxii and (with Index, 702. London: Butterworth & Co. (Publishers), Ltd. 20s. net.

## Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.]

### Married Women as Bondsmen.

Sir,—Referring to the letter headed "Married Women as Bondsmen" at p. 288 of your issue of the 19th August, surely the reply received from the Probate Registry to the effect that "no justification is required when a married woman becomes a surety" and that guarantees were accepted in the case under review from a man and a single woman, neither of whom were financially able to undertake the heavy liabilities attaching to the guarantee, discloses a serious state of affairs which urgently calls for remedy.

Under the Non-Contentious Probate Rules, 1939, companies or corporations authorised by their articles of association to act as sureties to an administration bond must file an affidavit as to the sufficiency of the assets of the company or corporation to justify their financial position, and if this is considered necessary by the Probate Registry from companies or corporations whose assets frequently run into millions, how much more necessary should it be for private sureties.

Publication of the above facts through the medium of your journal might have the effect of drawing the Principal Registry's attention to, what seems to be, a highly unsatisfactory position as regards private sureties.

Caterham.

JAMES E. HERNAMAN.

1st September.

### Administration and Cost of Law.

Sir,—The correspondence in *The Times*, initiated by the letter in their issue on 23rd August signed "Two Lawyers," raises questions of long and pressing importance.

Under our Constitution the three primary functions of government are legislation, administration and judicial dispensation. The "Two Lawyers" letter suggests, and in many respects justifiably, that the last branch is the "Cinderella" of the trio. (Perhaps the "Ugly Sisters" are unduly complicated legislation and statutory orders, and technical rules of procedure).

The "Two Lawyers," however, proceed too far when they doubt the financial wisdom of pursuing a claim for less than £50 in the county court or £250 in the High Court. Their attitude recalls the story of the judge who declared that if, in a country lane, he were accosted by a footpad who said "Give me your watch or I'll knock you down," he, the judge, would put up a good fight; but that if the footpad said "Give me your watch, or I will sue you for it in the courts," he would hand it over at once!

There are many reforms which would lessen the cost of litigation, but it has to be borne in mind that the training of our judges, highly skilful and upright as they are in their judicial decisions, is that of the advocate. They therefore appear to approach the problem of reform from a different point of view from that of the intelligent man of affairs who often has more practical experience of how justiciable disputes arise and can most economically be solved.

Legislation of ever-growing complexity, the obligation of judges to apply the decisions of others in preceding cases, and the highly technical and lengthy interlocutory procedure before the case reaches the judge himself for trial are contributory causes of the undue expense and delay to which the "Two Lawyers" rightly call attention.

In a paper entitled "Judicial Dispensation" which I read to The Law Society in 1934, I indicated a number of reforms which would lead in the direction desired by the "Two Lawyers." I remember the President saying to me at the time what whatever value there might be in my paper, no reforms could be achieved under our present system in less than forty years, so that the originator would seldom be likely to see any measure of accomplishment.

This pressing subject seems to call for the appointment of a Royal Commission or Select Committee.

London, E.C.2.

CHARLES L. NORDON.

31st August.

## Our County Court Letter.

### The Supply of Electricity.

IN *Wessex Electricity Co. v. F. W. Miller*, at Cirencester County Court, the claim was for £7 18s. 2d. in respect of electricity supplied to business premises at No. 12, Market Place, Cirencester. The defendant's case was that he had sold the business to G. J. Miller, and the claim arose in respect of the period subsequent to the sale. His Honour Judge Kirkhouse Jenkins, K.C., held that the defendant remained liable to the plaintiffs, and judgment was given for the amount claimed, with costs.

### Sale of Lending Library.

IN *F. W. Miller v. G. J. Miller*, at Cirencester County Court, the claim was for £43 14s. 11d., viz., £12 as the price of 200 books and £31 14s. 11d. as the loss on the hire of books, and on sales of stamps and coins for the period from the 21st February to the 25th March. The plaintiff's case was that in December, 1943, he negotiated for the sale of his lending library to the defendant. Completion was fixed for the 21st February, 1944, but the defendant had failed to carry out the arrangement, and his default had involved the plaintiff in consequential loss, as claimed. His Honour Judge Kirkhouse Jenkins, K.C., held that an adequate sum, in respect of all heads of the claim, was £10. Judgment was given for the plaintiff accordingly, without costs.

### Collisions due to absence of Rear Lights.

IN *Mailand v. Ruisbeck and Another*, at Morpeth and Blyth County Court, the claim was for damages for negligence. The case for the plaintiff was that he had been a passenger in the first defendant's motor omnibus. The night was dark, and the omnibus overtook and ran into the second defendant's lorry, which was travelling in the same direction. It transpired that the rear light of the lorry had gone out. The plaintiff was injured in the collision, but it was held that the driver of the omnibus had not been negligent. It was also held that (1) the driver of the lorry had not been negligent, (2) the owners of the lorry were not liable on the ground of nuisance created or maintained by them or their servant. Judgment was given for both defendants, with costs. The plaintiff appealed against the judgment in favour of the second defendants, on the ground that, apart from the lorry driver's knowledge or lack of knowledge that the rear light was out, the presence of the lorry on the road, without a rear light, constituted a nuisance. The Court of Appeal (Lord Greene, M.R., MacKinnon and Luxmoore, L.J.J.) rejected the latter proposition, and upheld the judgment in favour of the defendants (see [1944] W.N. 195). The above case was distinguished on the facts from *Ware v. Garston Haulage Co., Ltd.* [1944] 1 K.B. 30. In that case a motor cyclist, at night, ran into the back of a trailer, which was attached to a stationary lorry standing on its near side of a highway. The lorry broke down at 10 a.m., and it was still there at 5.35 p.m. (lighting-up time), when the rear light and head lights were switched on. At 7.20 p.m. the driver and his mate left the lorry to fetch hurricane lamps. At 7.30 p.m. the motor cyclist was found underneath the trailer, the bulb of the rear light being smashed. The judgment against the defendants was upheld, on the ground that there had been ample time for them to take all proper precautions to ensure that the accident, for which they were not responsible, should not develop into a nuisance on the highway.

### Decision under the Workmen's Compensation Acts.

#### Termination of Compensation.

IN *Cardiganshire County Council v. Didier*, at Aberystwyth County Court, an application was made for a review, by termination or diminution, of compensation of £1 10s. a week payable to the respondent. The applicants' case was that they had employed the respondent at Bronglais Institution for eleven weeks prior to the 7th February, 1942. On that date she fell, while carrying a small bath, and bruised her right arm. She returned to light work in December, 1942, but made no attempt to use her right arm. The respondent ceased work again, after a few days. The applicants' medical evidence was that any remaining disability was purely functional, and light work would be beneficial. The respondent was either subject to hysteria or was malingering. The greater girth of her right arm was due to the fact that she was right-handed. The respondent's case was that she had fallen against a mangle, and had never recovered the use of her right arm. Her own doctor did not appear as a witness, but another doctor gave evidence that the respondent had a defect in the circulation on the right side. She had neuritis in the right arm, referable to the injury. There was no breach of medical etiquette in examining another doctor's patient at the request of that patient's solicitor. His Honour Judge Temple Morris, K.C., held that the respondent had fully recovered. An order was made terminating the compensation, with costs to the applicants.

#### Compensation or Damages?

THE Workmen's Compensation Act, 1925, s. 29 (1), provides that the workman may at his option either claim compensation under the Act or take proceedings independently, but the employer shall not be liable to pay compensation for injuries to a workman

by accident arising out of and in the course of the employment both independently and also under the Act. The scope of this provision was considered in *Arabian v. Tuffnall & Taylor, Ltd.* [1944] W.N. 188. The plaintiff was a boy, aged seventeen, and, while employed by the defendants in a factory at a horizontal milling machine, he sustained an injury to his right hand in February, 1942. On 25th October, 1942, the plaintiff and his next friend signed (1) an agreement whereby the plaintiff was granted workmen's compensation, and (2) a form of application for a memorandum of the agreement to be recorded in the county court. The agreement was recorded, and, as from 1st October, 1942, became for all purposes enforceable as a county court judgment. The employers duly paid to the plaintiff £1 4s. a week as compensation under the agreement. On 12th October, 1943, the plaintiff, by his next friend, claimed damages for the same injury in an action in the High Court. The cause of action was negligence and breach of statutory duty. The defendants took the preliminary objection that the registered memorandum of agreement was an estoppel by record, whereby the action was barred. Wrottesley, J., held that the plaintiff, before entering into the agreement, was never adequately advised by any competent person. Unless it were for the benefit of the infant, neither the exercise of an option nor the making of an agreement was binding upon him. See *Stephens v. Dudbridge Iron Works Co.* [1904] 2 K.B. 225. The agreement in the present case could not have been for the benefit of the infant. Moreover, the estoppel by record, formed by the registered memorandum of agreement, was limited to proceedings under the Workmen's Compensation Act, 1925. See *Ware v. Whillock* [1923] 2 K.B. 418. The preliminary objection was overruled, and the action was ordered to proceed. In the event of the plaintiff being successful, credit would be given, in assessing damages, for the amount of compensation received; and any judgment in the plaintiff's favour would be subject to an undertaking not to enforce the recorded agreement thereafter.

## Obituary.

MR. F. G. STEVENS.

Mr. Frederick Guy Stevens, formerly a Judge of the Supreme Court of the Straits Settlements, died on Thursday, 17th August, aged sixty-six. He was called by the Inner Temple in 1908.

MR. A. G. T. BROWN.

Mr. Alfred George Tasker Brown, solicitor, of Llanelly, died on Tuesday, 22nd August, aged fifty-two. He was admitted in 1919, and was president of the Llanelly Law Society, and a member of the Council of The Law Society.

## Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 22, Chancery Lane, W.C.2 and contain the name and address of the subscriber, and a stamped addressed envelope.

**WILL—SETTLEMENT—CESSER WITH DEATH OF TENANT FOR LIFE—CESSER OF SEPARATE SETTLEMENT WITH DEATH OF STATUTORY OWNER—SALE IN EITHER CASE WHERE THERE IS A REVERSIONARY TRUST FOR SALE.**

Q. C.W. made his will dated 19th August, 1922, whereby he appointed his daughter A.D. and his friend E.B. executors (not naming them as trustees) thereof and gave and bequeathed to his wife M.W. 12s. per week for her life and his said wife to also have the use of his dwelling-house . . . for her life, the surplus of the rents and profits of his realty to be paid to his daughter A.D. for her life, and on her decease the remainder of his estate, both realty and personalty, to be sold and divided between the surviving children of his daughter A.D. in equal shares. Testator died on 23rd August, 1922, and his will was proved by both executors on 12th September, 1922. M.W. died intestate on 18th January, 1939. A.D. died testate on 21st March, 1944, but so far as her free estate is concerned it will not be necessary to prove her will of which her husband F.W.D. is the sole executor. E.B. died in A.D.'s lifetime. So far as testator's dwelling-house is concerned, it seems that the administrator of M.W. (who was tenant for life in possession of the house on 1st January, 1926) can convey the legal estate. The position with regard to testator's other realty is not so clear. We doubt whether either M.W. or A.D. could properly be described as a tenant for life on 1st January, 1926, as neither of them was in "possession" of such realty, Mrs. W. being merely entitled to 12s. a week from the rents and Mrs. D's interest being a remainder or reversionary interest. We are inclined to the view that title to the remainder of the realty should be made by trustees for sale and that F.W.D. should prove his wife's will and then appoint himself and another to be trustees of the settlement for the purposes of the Settled Land Act, 1925. But we shall appreciate other views on the matter.

A. We agree that the widow took the legal estate in the house of which she was to have the use for life on 1st January, 1926: see S.L.A., 1925, s. 20 (1) (vi), and L.P.A., 1925, Sched. I, Pt. II,

paras. 3 and 6 (c); and that her (general) personal representative can make a good title to a purchaser (*Re Bridgett and Hayes' Contract* [1928] Ch. 163; 71 Sol. J. 910). As to the rest of the real estate, the testator's daughter was the sole trustee for the purposes of the S.L.A., 1925 (S.L.A., 1925, s. 30 (3)) and, as there was no tenant for life or person having the powers of one, she, as statutory owner, took the legal estate on 1st January, 1926: see S.L.A., 1925, s. 23 (1), and L.P.A., 1925, Sched. I, Pt. II, paras. 3 and 6 (c). Her personal representative when constituted can, in our opinion, make a good title to a purchaser. Alternatively, that personal representative could appoint two new trustees of the will (as distinct from the settlement created thereby, which has ended) and they could (after an appropriate assent in their favour) make title under the trust for sale of the will (or a new trust for sale). Although not expressly made trustees for sale by the will, the executors were rendered such by implication, and equity never lacks a trustee.

**Settlement—VESTING LEGAL ESTATE IN NEXT TENANT FOR LIFE—WHETHER CONCURRENCE OF A NEW TRUSTEE OF THE SETTLEMENT NEEDED.**

Q. By a marriage settlement dated 26th December, 1890, property was settled in trust for the wife for life, then for the husband for life, and then for the children of the marriage. Two children were born and are still living. The settlement gave the trustees power to invest in the purchase of freehold ground rents with power to sell the same. Certain freehold ground rents were bought by the trustees out of the trust fund, but the conveyances to them did not state that they were held upon trust for sale. Consequently, on the 1st January, 1926, the ground rents became settled land. A vesting deed in favour of the wife was executed on the 20th June, 1941. The wife died on the 25th December, 1943, and one of the trustees of the settlement died on the 3rd January, 1944. Probate of the wife's will (limited to settled land) was granted to the surviving trustee on the 12th June, 1944. An appointment of a new trustee was executed on the 20th June, 1944, in place of the deceased trustee and to act jointly with the continuing trustee. It is now desired to execute a vesting deed of the settled land in favour of the husband, and should like your opinion as to whether it is necessary to make the new trustee a party to the vesting deed for the purpose of confirming the vesting declaration.

A. It would be more usual to have a vesting assent rather than a deed, but even if a deed is employed there is no need to make the trustees of the settlement or either of them party thereto, the only necessary parties being the limited grantee under the grant of 12th June, 1944, and the husband. The deceased wife had the legal estate, it is now in that grantee, and that grantee is in a position to pass it by way of vesting assent (or vesting deed) without any assistance or concurrence. For a form of vesting assent suitable, see "Prideaux," 23rd ed., vol. III, p. 933, Precedent IX, or "Rose's Conveyancing Precedents," 3rd ed., p. 475, Precedent V.

**Wills Act, 1837—SECTION 33 AND A CHILD EN VENTRE SA MERE.**

Q. A died on the 1st May, 1944, having by his will bequeathed the whole of his estate to his son, B, absolutely. B predeceased the testator leaving a child *en ventre sa mere*. There is no proviso in A's will as to the residuary estate, but it is a straight bequest to son B absolutely. A's only other living relatives are sisters. Who succeeds and who is entitled to prove the will?

A. A child *en ventre sa mere* is apparently "issue" for the purposes of s. 33 of the Wills Act, 1837 (*Re Griffiths' Settlement* [1911] 1 Ch. 246), provided the child is born before the death of the testator (*Elliot v. Joicey* [1935] A.C. 209). If, then, the child was born before the death of the testator the section will operate, and A's entire estate will pass as under the will or in the intestacy of B. If, on the other hand, the child was not born in the lifetime of the testator, A, then A's sisters will take under A. of E.A., 1925, s. 46 (1) (v) first. In the former case the grant would go to the personal representatives of B. In the latter case one of the sisters of A could take a grant. It is understood that the will appointed no executor or (possibly) appointed B.

**WILL—SETTLEMENT—REVERSIONARY TRUST FOR SALE AFTER DEATH OF LIFE TENANT—ELECTION TO TAKE IN SPECIE BY REVERSIONER—ASSENT.**

Q. By his will A appointed X and Y executors and trustees and devised and bequeathed all his real and personal estate to them on trust to pay the income thereof to his wife, B, for her life, and on her decease on further trust to sell, call in and convert, etc., and to divide the net proceeds unto and equally between his children, share and share alike, etc. There was no trust for sale until B's death. A died in 1913 possessed of certain freehold property leaving B and an infant son, C, his only child, surviving, and his will was duly proved by X and Y. B received the rents during her life, but no vesting deed or assent was ever made in her favour. X died in 1940 and C was appointed a trustee of the will of A to act jointly with Y. B died in 1943 and her will was proved by C, her sole executor. Can C, as personal representative of the deceased tenant for life, now vest the freehold property in himself by a simple assent, disregarding the devise on trust for sale to the trustees of A's will which took effect on

B's death, or should Y join with C in the assent—and, if so, what form should it take?

A, Y and C are strictly entitled to an assent if their trust for sale still exists (S.L.A., 1925, s. 7 (5), but it may well be that the election of C to take in specie has ended the trust for sale (for most purposes). We suggest an assent made between C of the first part, Y and C of the second part and C of the third part, whereby (after reciting the will and death of A seised and the probate of his will, the death of X, the appointment of C, the will of B, her death, the probate of her will (general grant), the payment of all death duties on the death of B, and the election of C to take in specie) C, with the consent of Y and C, assents in his own favour absolutely.

## Notes of Cases.

### JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

#### Power & Sons, Ltd. v. Ripstein.

Viscount Simon, L.C., Lord Macmillan, Lord Wright, Lord Porter and Lord Simonds. 27th July, 1944.

*Canada—Quebec—Contract made out of the jurisdiction—Code of Civil Procedure of Province of Quebec.*

Appeal from a judgment of the Supreme Court of Canada.

The appellants were a limited company formed in England. It had no assets or place of business in Quebec and was not domiciled there. By an oral agreement of March, 1927, made in London between the appellants' predecessors, a firm, their co-defendants and the respondent, provision was made for the marketing in Canada of the firm's wines and spirits by the appellants' co-defendants and the respondent, who were to be paid by commission. In 1929 the appellant company took over the business of the original firm and the agreement was continued with the substitution of the appellants for the firm. In 1937 the agreement was terminated. In 1938 the respondent started this action against the appellants and their co-defendants in the Superior Court of the Province of Quebec for a declaration that a partnership was created by the agreement of 1927 and for an account. The writ was not served personally on the appellants. They entered an appearance without prejudice and moved to have the action dismissed against them on the ground that they were not domiciled in the district of the court and that the process had not been served personally on them, that the whole cause of action was not alleged to have arisen in the province and had in fact not so arisen. The question was whether the court had jurisdiction under the Code of Civil Procedure of the Province of Quebec to summon the appellants. The trial judge held the court had no jurisdiction under any of the articles of the Code. He held that the court had no jurisdiction under art. 94 (3) as "the whole cause of action" had not arisen in Montreal; that the court had no jurisdiction under art. 94 (3) as the appellant had no goods in the province; and that the court had no jurisdiction under art. 94 (5) because the contract had been made orally in London. His decision was affirmed on appeal, but reversed by the Supreme Court of Canada.

LORD WRIGHT said that their lordships were unable to concur in the decision of the Supreme Court of Canada. The question was whether the court had power in the circumstances of this case to exercise jurisdiction over a person or corporation not personally served within it. If a party had been served within the jurisdiction, even though merely temporarily there, the jurisdiction of the court was generally established. But a court would not generally be entitled to assume jurisdiction over a person who was outside the jurisdiction and had not been formally served within it, and who did not submit to the jurisdiction. If that power were to be exercised it must be given to the court by legislation. It was stated in *Berkley v. Thompson*, 10 A.C. 45, 49, by Lord Selborne, L.C.: "The general principle of law is, *acta sequitur forum rei*; not only must there be a cause of action of which the tribunal can take cognisance, but there must be a defendant subject to the jurisdiction of that tribunal; and a person resident abroad, still more, ordinarily resident and domiciled abroad, and not brought by any special statute or legislation within the jurisdiction, is *prima facie* not subject to the process of a foreign court—he must be found within the jurisdiction to be bound by it." If he were found within the jurisdiction of the court, and served there, he would generally be bound by the process; equally, he might be bound if he submitted to the jurisdiction. But otherwise the court had no power unless expressly conferred on it. The exercise of such a power involved the exercise of extra-territorial jurisdiction. In Quebec it was conferred by articles of the Code of Civil Procedure of the Province. The court was strictly bound by the terms of those articles. It had no discretionary power to go outside the terms of the articles merely because in its opinion it would be the *forum conveniens*. The action here was based on a contract, and in their opinion it was impossible to treat the place where the original contract was made as immaterial and they were of opinion that the appeal should be allowed.

COUNSEL: *Valentine Holmes and Granville Slack; W. D. Roberts and Mortimer Winfield* (of the Canadian Bar).

SOLICITORS: *Simmons & Simmons; J. M. Isaacs.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

### KING'S BENCH DIVISION.

#### *In re A Solicitor.*

Viscount Caldecote, L.C.J., and Humphreys and Macnaghten, JJ.  
13th March, 1944.

*Solicitors—Order by Law Society's Disciplinary Committee—Application to stay further proceedings—Whether court has inherent jurisdiction to order*

*stay—Solicitors (Disciplinary Proceedings) Rules, 1942 (S.R. & O., No. 1831), r. 29 (1).*

Application by a solicitor to prevent further steps being taken in regard to an order made by the Disciplinary Committee of The Law Society that his name be struck off the roll of solicitors. The Disciplinary Committee refused the solicitor's application under r. 29 of the Solicitors (Disciplinary Proceedings) Rules, 1942, to suspend the filing of the order with the registrar pending an appeal. The applicant gave notice of his present application to the Registrar of Solicitors, i.e., the Council of The Law Society.

VISCOUNT CALDECOTE said the question was whether the court had any jurisdiction to make the order sought. The procedure was set out in "Cordery on Solicitors," 4th ed., p. 227. The decision, together with a statement of the committee's findings of fact, was to be pronounced in public, and a copy of the findings and order sent to the applicant within four days, and to the registrar of solicitors within eight days. In due course, notice of the order had to be published in the *London Gazette*, and it was plain that when that point was reached the adverse effect on the solicitor would be serious. His lordship referred to *In re a Solicitor* [1924] 1 K.B. 699, and said that having regard to the language of Avory, J., in that case the court was not bound to treat it as a binding authority. Rule 29 (1) of the Solicitors (Disciplinary Proceedings) Rules, 1942, provided: "The committee shall have power, upon the application of a party against or with respect to whom they have made an order, to suspend the filing thereof with the registrar." It was impossible to say that the court had inherent jurisdiction to suspend the publication of the proceedings when the rules gave the committee jurisdiction to make such an order, but were silent as to any power of the court. The application was refused.

HUMPHREYS and MACNAGHTEN, JJ., agreed.

COUNSEL: *I. J. Lindner; T. G. Monier-Williams.*

SOLICITORS: *J. Jubb; T. G. Lund.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

## War Legislation.

### STATUTORY RULES AND ORDERS, 1944.

- No. 990. **Alien Restriction.** The Aliens (Movement Restriction) (No. 2) Order, Aug. 19.
- No. 992. **Allied Powers** (War Service). French Nationals. Allied Powers (War Service) (No. 3) Order in Council, Aug. 10.
- No. 991. **Allied Powers** (War Service). United States Nationals. Allied Powers (War Service) (No. 2) Order in Council.
- E.P. 987. **Delegation of Powers** (Min. of Commerce for Northern Ireland) Order, Aug. 21.
- E.P. 1001. **Finance.** Blocked Accounts (Authorised Investments) Order, Aug. 24.
- No. 993. **Foreign Marriages** (China) (Repeal) Order in Council, Aug. 10.
- No. 1015. **Income Tax** (Employments) (No. 2) Regulations, Aug. 24.
- No. 1019. **Police.** Scotland. Police (Appeals) (Scotland) Rules, Aug. 15.
- E.P. 1018. **Police.** Scotland. Temporary Constables (Emergency) (Scotland) Rules, Aug. 15.
- No. 994. **Price Control** (Regulations of Disposal of Stocks) (Isle of Man) Order in Council, Aug. 10.
- No. 989. **Protected Areas.** The Alien (Protected Areas) (No. 2) Order, Aug. 19.
- No. 927. **Safeguarding of Industries** (Exemption) (No. 3) Order, Aug. 21.
- No. 955/S.45. **Session, Court of, Scotland, etc.** Procedure (Fees). Act of Sederunt, July 20, extending certain temporary acts of Sederunt Increasing Fees.
- E.P. 1007. **Siting of Ricks** (Amendment) Order, Aug. 19.

### BOARD OF TRADE.

**Companies Act, 1929.** Company Law Amendment Committee (Chairman, Cohen, J.). Minutes of Evidence. 20th Day. 2nd June, 1944. 21st Day. 16th June, 1944.

### WAR DAMAGE COMMISSION.

**Cost of Works** (England and Wales)). Explanatory Pamphlet issued in agreement with the National Federation of Building Trades Employers as to Procedure in arranging for the Repair of War Damage and the assessment of payments of Cost of Works (Form R.O.D.1). June, 1944.

## Notes and News.

### Honours and Appointments.

The Lord Chancellor has appointed Mr. ADAM PARTINGTON, Registrar of the Brentwood, Grays Thurrock, Ilford and Southend County Courts, to be in addition Registrar of the Chelmsford County Court as from the 1st September, 1944.

### Notes.

Mentioned in dispatches for service at an R.A.F. station in Britain, L.A.C. Kenneth Burrell, a Chelmsford solicitor, opens a free legal advice bureau in his barrack room at night for a queue of clients from all ranks.

The Press Association learns that Sir Edward Hale Tindal Atkinson, Director of Public Prosecutions, will shortly retire. He is sixty-six, and has not been in good health for some time. He has held the office since March, 1930, when he succeeded Sir Archibald Bodkin.

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